

SPECIAL CIVIL APPLICATION NO.1337 OF 1995
WITH
SPECIAL CIVIL APPLICATIONS NO.2396 & 3206 OF 1995

Date of decision: 11-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S. K. KESHOTE,J
(11-12-1995)

Mr. R.R. Tripathi & Mr. D.P. Vora for the petitioners
Mr. D.A. Bambania for the respondents.

ORAL JUDGMENT:

The petitioners of these petitions have been appointed as Lecturers in different disciplines of Government Colleges at different places in the State after having been selected in the local selection. It is not in dispute between the parties that the post of Lecturers fall within the purview of the Gujarat Public Service Commission, that is, regular appointments on these posts are to be made only on the recommendation from the select list prepared by the Gujarat Public Service Commission after making open selection. The petitioners were given appointment from time to time on ad hoc basis for fixed term terminable with the end of the academic session. Two-fold prayers have been made by the petitioners in these writ petitions. In special civil applications No.2396 and 3206 of 1995 it is prayed that the respondents may be directed to regularise the services of the petitioners as lecturers and not to terminate their services without prior approval of this Court. A further prayer has been made that the respondent authorities be directed to provide reasonable opportunity to the petitioners to get selected by the Gujarat Public Service Commission for regular appointment. Though the prayers to regularise their services and to give them reasonable opportunity to get selected by G.P.S.C. are contradictory, this point no more detains me any further as the learned counsel for the petitioners very fairly submitted that he is given up the prayer regarding issue of writ of mandamus to regularise the services of the petitioners. He very frankly conceded that in view of the decision of this Court in L.P.A. No.180 of 1995 decided on 13-6-1995, this court may not possibly issue writ of mandamus to the respondents directing to regularise the services of the petitioners only on the basis that they are working since long and having been appointed after local selection.

2. The grievance in substance is that the petitioners have been appointed after local selection, though for fixed term but on condition that their services will come to an end on the availability of selected candidates; but the respondents cannot dispense with their services and substitute them with other adhoc appointees. It has next been contended that so long as the selected candidates through G.P.S.C. are not made available the respondents are not justified in dispensing with the services of the petitioners.

3. I have given my thoughtful consideration to the

grievance made by the learned counsel for the petitioners. It is true that no selected candidates have been made available so far by G.P.S.C. Mr. Bambania, learned counsel for the respondents specifically conceded that that situation has not arisen so far. But he contended that it is a case of fixed term appointment and as such by afflux of time it comes to an end, and as and when the Government is in need of teaching staff again it is competent to give them reemployment on same terms. In L.P.A. No.180 of 1995, decided on 13-6-1995 Division Bench of this Court (Coram: B.N.Kirpal, CJ (as he then was) and H.L.Gokhale,J) has held that adhoc appointees whose appointments were for fixed term with further condition to be terminated on the availability of selected candidates of G.P.S.C. have to make room for the selectees. This position has not been disputed by the learned counsel for the petitioners that the petitioners have to make room for the selected candidates, but he contended that such situation has not arisen and as such there is no justification for terminating the services of the petitioners.

4. In this connection reference may be made to the decision of the Supreme Court in the case of State of Rajasthan vs. Rajendra Kumar Ravat, 1989 Suppl.(2) SCC 268. In the case before the Supreme Court, termina..R

services of legal assistants appointed on adhoc basis was the outcome of regular selection of candidates. There the temporary appointees had offered themselves as candidates before the Public Service Commission, but have not been successful. Question arose as to whether those temporary appointees whose services were terminated on availability of selected candidates and others who have appeared before the Public Service Commission but not selected, could be given temporary appointment on the posts which remained unfilled after adjusting all the selected candidates. In para 8 of the judgment the Supreme Court held that even if the temporary appointees work for years together and they are continued with the approval of the Public Service Commission, they have no right of regularisation whatsoever. The relevant observations of the Supreme Court reads as under:

" There is no dispute that the respondents had offered themselves as candidates before the Public Service Commission and have not been successful. On that footing it has been contended relying upon the decision of this Court in the case of Om Prakash Shukla vs. Akhilesh Kumar Shukla, that the

persons of this category are no more entitled to lay claim on the basis of termination of their employment under Rule 30. We agree that the same is the position in law.

It has been stated before us by appellant's counsel that as on today the sanctioned strength of Legal Assistants is 126; but that is disputed on behalf of the respondents. It is difficult for us to determine the exact number and that must be left to the State Government. In the event of there being vacancies in the sanctioned posts the same would be available to be filled up under Rule 30. It has to be taken note of here that seven of the Legal Assistants were recruited in 1982 under Rule 30 and have been continuing with the periodic approval of the Public Service Commission. The rule nowhere contemplates regularisation of such recruitment. Under Rule 30 the appointments are bound to terminate in the event provided in the proviso of the rule. Therefore, their continuance was not correct. The State Government shall take immediate steps to fill up the vacancies as required under the rules by sending the requisition to the Public Service Commission. On the basis of the determination of the exact number of vacancies, the State Government will have also to require the Public Service Commission to recruit for the remaining vacancies. Until such recruitment is made, the seven Legal Assistant who have been continuing from 1982 and are not parties to the proceedings may continue. For the remaining vacancies (after the reserve list is exhausted) the State Government is directed to appoint out of the persons who were already in service and whose services have been terminated following the rule indicated by the High Court, namely, those who have put in the maximum period of service shall be preferred. The State Government shall send the requisition to the Public Service Commission without delay and we direct the Public Service Commission to give priority to make the selection as early as possible. The judgment of the

High Court is modified. The State Government shall make temporary appointment as directed above withi.R

civil appeals are disposed of with no order as to costs."

The Supreme Court in the aforesaid case insisted that whatever vacancies remained after adjusting the selected candidates, shall be filled up by regular selection as early as possible.

5. The action of the respondents not to fill up the posts regularly and to go on making adhoc appointments is not reasonable. It really works very hard in case a person, after working for years together, is, at one point of time, asked to go home as he has not been selected for the post and other selected candidates are made available. Adhoc appointments are to be made where there is compelling urgency and the regular appointments cannot be made within a short period by G.P.S.C. Here is a case where the petitioners are working on adhoc basis for a considerable period. Why such contingency is allowed to occur?. Reasonably, adhoc appointments are understandable for short duration, but to continue adhocism for years together deserves to be deprecated. No reason whatsoever has been given by the respondents as to why necessary requisition could not be sent to G.P.S.C. for filling up these posts by regular appointments. This is perhaps to make appointment on adhoc basis only for fixed term, reserving their right to give fresh appointments and/or to substitute the adhoc appointees by other adhoc appointees which is not in consonance with the Constitutional mandate. Otherwise also it is not in the larger public interest because for want of security in service or on account of the hanging sword of termination over his head, a teacher may not do justice to his work of teaching the students. A teacher who is secured in employment will certainly work with all zeal and enthusiasm. Time and again cases are coming before this Court and also before the Supreme Court where termination of services of adhoc appointees are made after long time. It is a different matter that those persons could not be protected, but at the same time this type of termination would be be painful to the petitioners who are sent back without any relief. A person by working temporarily may settle himself and after working for some years if his services are terminated, then it will have serious repercussions, as it will affect not only the petitioner but all the members of his family. These are hard realities, but unfortunately, despite catena of judicial pronouncements as well as deprecation of the practice by the Courts, no

improvement is seen. On the contrary the situation is becoming worse. In the case of Rajendrakumar Rawat, some of the petitioners were working for eight years before their temporary services were terminated. Therefore the Supreme Court directed the State Government to send requisition to the P.J

direction was issued to the Public Service Commission to make selections as early as possible.

6. In special civil application No.1137 of 1995 the only prayer made by the petitioner is to allow her the grade increments from 1-1-1989. The petitioner in this case also was appointed as lecturer on adhoc basis by local selection. This claim has been based on Government Circular dated 6-1-1990. In support of the claim the petitioner has also placed reliance on the interim order which has been passed by this Court in special civil application No.5721 of 1992 on 4-12-1995. The interim order which has been passed by this Court in the aforesaid case reads as follows:

"Rule. By way of ad interim relief the respondent authorities are directed to pay the petitioner their annual increments from July 1995 and continue the.R

file undertaking to this Court within fifteen days from today to the effect that in the event they fail in the petition they will return the amount received by them with 12% interest to the respondents."

Learned counsel for the respondents Shri Bambania contended that the grade increments are permissible to lecturers who have been regularly appointed and not to lecturers who have been appointed on adhoc basis for fixed term. The petitioner in this writ petition is not getting grade increments from 1-1-1989 as per her case. Now as I am giving directions to the respondents to make regular selection I do not consider it a fit case where any direction is to be issued at this stage. In case the petitioner is selected for the post, which is more important, the question of giving her grade increments for the period of ad hoc service may be considered at a later stage. This writ petition is disposed of with the direction that after regular selection is made in pursuance of the direction of this Court, which I am giving just now, it shall be open to the petitioner to make appropriate claim in this respect to the concerned authority first and thereafter in case it is decided against her it will be open to her to approach this Court.

7. In the result all three writ petitions are being

disposed of with the direction that the respondent No.1 State of Gujarat and respondent No.2 -Commissioner of Higher Education will take necessary steps immediately to send requisition to the Gujarat Public Service Commission for selecting candidates for the posts of lecturers which are available at different Government Colleges in the State in different disciplines. Respondents No.1 and 2 will send the requisition for selecting candidates for both permanent and temporary posts. The posts on which ad hoc appointees are working shall be considered to be vacant posts. However, the petitioners in these writ petition have their right to apply for the posts and necessary relaxation in age, if by that time they become overaged, may be considered to be given, if they were within the age limit when they were appointed on ad hoc basis. Necessary exercise in this respect may be undertaken by respondents No.1 and 2 within a period of one month from the date of receipt of certified copy of this judgment, including the exercise of determination of vacancies, and within next one month the necessary requisition may be sent to the Gujarat Public Service Commission. Gujarat Public Service Commission is directed to make selection of candidates as early as possible after receipt of the requisition for the posts, but not later than six months thereafter. Respondents No.1 and 2 are directed to send copy of this order along with the requisition for the posts to the Gujarat Public Service Commission. The petitioners shall be allowed to continue to work as lecturers for 8 (eight) months as aforesaid or till the day on which the duly selected candidates are available, whichever is earlier. Subject to the aforesaid directions, rule discharged. No order as to costs.

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